

MEETING SUMMARY for MERCURY WORK GROUP

Date: May 8, 2003
9:00 am –11:00 am
Location: IGCN
Conference Room D
Indianapolis, IN

Present at the meeting:

Tom Barnett (Ispat Inland Steel), Eric Fry (B.B. Coal), Kevin Hoge (Nisource), Tim Lohner (AEP), Dave Pfeifer (EPA), Cyndi Wagner (Whittman Hydro Planning Associates), and Keith Veal (City of Indianapolis).

Participating by way of conference call were Robin Garibay (The Advent Group) and Charlotte Read (environmental representative).

Representing IDEM were John Donnellan, Nancy King, Meredith Kostek, Steve Roush, Paula Smith, MaryAnn Stevens, and Larry Wu.

Acceptance of meeting minutes

The April 9, 2003 meeting minutes were accepted by the workgroup. The minutes are posted on the IDEM, Office of Water Quality's Mercury website, a part of the total Triennial Review website.

Approval of the Workplan

The mercury workplan was approved by the workgroup with the stipulation that dates of accomplished tasks be added to the plan. The workplan is posted on the IDEM, Office of Water Quality's Mercury website, a part of the total Triennial Review website.

Discussion topics

1. Nancy King, Chief of the Rules and Legislation Section of the Office of Legal Counsel, gave a report on the 2003 General Assembly's legislative actions concerning fixing the disparities existing in Indiana's variance statutes. IC 13-14-8-8 concerns requests for variance of general rules where the affected person believes the imposition of the rule would impose an undue hardship or burden. IC 13-14-8-9 concerns requests for variance of NPDES rules. The EPA has overfiled Indiana's rules, and the legislature needs to adjust Indiana's statutory authority to be acceptable to EPA. The conditions to be met by a variance applicant can be established in rulemaking. With regard to the question about administratively extending a variance when a permit is extended, Nancy was clear and concise that a variance is a condition of a permit and when a permit is administratively extended so are the conditions of the permit.

2. In follow up to the April 9th meeting's discussion about whether the water board has the authority to regulate airborne mercury under the Clean Water Act, John Nixon, of IDEM's Office of Legal Counsel, prepared a memo presenting legal opinion in this matter. Meredith Kostek, also of the Office of Legal Counsel, presented John's memo to the workgroup. IDEM follows EPA's handbook that can be found at: www.wpa.gov/owow/oceans/airdep/airdep_sept_final.pdf

Charlotte Read asked if a permit could contain a condition requiring CEMs to monitor air emissions. Meredith replied that she would look further into the topic but did not currently feel CEMs could be required after an initial reading of the EPA guidance.

3. The draft first notice was discussed briefly, and the workgroup gave approval for the notice to be submitted to the Legislative Services Agency for publication in the June 1, 2003 Indiana Register. The comment period will extend from June 1 to July 30, 2003. Tim Lohner asked a question concerning the first listed alternative in the first notice that includes as a condition of the potential to receive a variance the discharger providing proof that there is no other economically manageable treatment option. Tim's belief is that a streamlined variance process should accept as a given that the economic hardship exists and each discharger does not need to do an economic demonstration that is required for an individual variance request. Meredith replied that a decision regarding proof of economic hardship is yet to be made or will be part of the mercury rulemaking process in developing draft rule language.

4. The mercury rulemaking workplan was discussed and accepted by the workgroup with the agreement that specific future task dates will be removed and dates of accomplished tasks will be included. The workplan is to be available on the mercury rulemaking website.

5. Prior to the May 8th workgroup meeting, Robin Garibay provided three data documents that summarize mercury in Indiana waters from industrial and POTW dischargers. All the data in the documents are based on total mercury. One of Robin's conclusions is that Indiana waters are similar in mercury with surrounding states. Inside Indiana, we don't have as much mercury data for POTWs as for industry, but we do have data from Valparaiso, Gary, East Chicago, and Hammond. Due to the limits of the available POTW data, we will probably need to rely on data from other states. Another of Robin's conclusions is that the data support the need for a variance procedure. In developing such a procedure, we need to learn about the effectiveness of programs in controlling mercury, what other states have done, and the conduct of mercury variance issuance by other states. No one in the group seemed to know if Ohio, one state having an established variance procedure, has yet issued a mercury variance under their procedure.

6. Dave Pfeifer of EPA attended the meeting in person rather than by conference call. He provided a description of the federal review process for variance requests. The process includes EPA preparing a biological evaluation of a state's water quality rules. The U.S. Fish and Wildlife Service assesses the potential for injury to endangered species and is primarily concerned with eagles because of their position high in the food chain for bioaccumulation of mercury. Mussels are also a concern but not to the same degree as eagles since the mussels, being much lower in the food chain, have less opportunity for bioaccumulation of mercury. Dave discussed that EPA's human health criteria are based on methylmercury and that EPA has a new human health methodology. Chronic criteria are used to protect growth and reproductive capabilities of animals.

7. Tim Lohner raised the point that not everyone should be eligible for a streamlined variance and that it should be reserved for those that meet a threshold. Charlotte countered that a compliance schedule included with the discharge permit could achieve the goal of a variance while being more protective of water quality. She further stated that rules should not be written so leniently just to avoid the potential for appeal.

8. Charlotte asked about public participation, but aside from recounting that Larry Wu spoke on that subject at the March 19, 2003 Triennial Steering Committee meeting, time ran out at this workgroup meeting for further discussion.

To Do List

- Meredith is to review variance rules used in other states, especially Ohio.
- Robin is to investigate how other states are approaching permitting of mercury and why.
- Dave is to provide the biological evaluation EPA is currently doing on Michigan rules.
- Steve Roush is to investigate the pretreatment role in mercury treatment and removal.
- Keith Veal and John Chavez, both from the City of Indianapolis, are to research removal efficiencies of conventional treatment technologies.

All workgroup members with assignments agreed to have their findings reported to IDEM by June 3, 2003, so the information can be forwarded to the entire workgroup by June 4th.

Next meeting

The next meeting is scheduled for June 11, 2003, from 9:00 to 11:00 A.M., at IGCN, Twelfth Floor, Conference Room D.